

IN THE MATTER OF
EHRHART CONRAD COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket #668. Complaint, Mar. 20, 1940—Decision, May 1, 1940

Where a corporation engaged in sale and distribution of food products to retail dealer purchaser in various other States and in the District of Columbia, in competition with others engaged in sale and distribution of like or similar products in commerce as aforesaid—

Sold and distributed its food products under various plans or methods involving lot or chance in such sale and distribution and including (1) plan under which it thus sold and distributed under label "Plee-zing" its products, together with Plee-zing Treasure Chest devices or cards or booklets for use in sale and distribution of such products to consuming public, in accordance with which plan and explanatory legend displayed on card customers of its retail dealer to whom were distributed such cards or devices became entitled, upon the filling of their respective cards with 100 of the treasure-chest receipts, given with each 25-cent purchase of its said products, to cash awards ranging from 50 cents to \$5, and in exchange for the 15-cent cash redemption value assigned to card or booklet, as determined and disclosed by statement revealed through breaking of card's seal, when filled with the 100 receipts, and returned for said purpose to dealer, whom it compensated for rewards or prizes thus paid; and (2) various other plans or methods of distributing or selling its said food products by lot or chance similar to that above described and varying therefrom in detail only; and

Supplied thereby to and placed in the hands of others means of conducting lotteries, gift enterprises, or games of chance in sale of such products to consuming public, in accordance with said sales plans or methods involving game of chance or sale of a chance, to procure articles or products or sums of money of much greater value than amounts to be paid therefor, contrary to the established public policy of the United States Government, and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving games of chance or sale of a chance to win something by chance, or any other method contrary to public policy and refrain therefrom;

With effect of inducing consuming or purchasing public to buy its said product in preference to like or similar products offered or sold by its competitors, and with result that many dealers and ultimate purchasers of products similar to those distributed by it were attracted by its said sales plans and methods and by element of chance in sale thereof as above described, and were thereby induced to purchase such products from it in preference to similar goods sold by competitors who do not use same or similar methods, and with capacity and tendency, because of game of chance or sale of a chance to win something by chance, to divert trade to it unfairly from said competitors who do not use same or equivalent or similar methods:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. D. C. Daniel for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Ehrhart Conrad Co., a corporation, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Ehrhart Conrad Co. is a corporation organized and doing business under the laws of the State of Pennsylvania with its principal office and place of business located at 106 Carlisle Street, Hanover, Pa. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of food products to retail dealers. Respondent causes and has caused its products, when sold, to be shipped or transported from its aforesaid place of business in the State of Pennsylvania to purchasers thereof in the various other States of the United States and in the District of Columbia, at their respective points of location. There is now, and for more than 1 year last past has been, a course of trade by said respondent in such food products in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business respondent is, and has been, in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as alleged in paragraph 1 hereof, respondent sells and distributes and has sold and distributed food products labeled "Plee-zing" to retail dealers. Respondent sells and distributes and has sold and distributed to said dealers a so-called "Plee-zing Treasure Chest" device for use in the sale and distribution of said food products to the consuming public in a manner involving the operation of a game of chance, gift enterprise, or lottery scheme. The sales plan or method employed in selling and distributing said food products to the consuming public by means of said device is substantially as follows: The "Plee-zing Treasure Chest" device consists of a card referred to by respondent

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as a booklet, with a gold seal thereon together with 100 small trade "receipts." The said card has provided on the front and reverse sides thereof blank spaces on which said receipts are to be pasted. On the front side or face of said card appear the following instructions or legends:

**"Plee-zing" Treasure Chest
Plan and Governing Rules
You will be given one**

"Plee-zing" Treasure Chest receipt with each 25¢ spent with us. Be sure and paste receipts in this booklet. Under the Seals of some "Plee-zing" Treasure

Chest booklets are listed valuable PLEE-ZING products.

(Back of Seal in Under the others is listed cash in amounts of 50¢, 75¢,
this space) \$1.00, \$2.00, or \$5.00. **THERE ARE NO BLANKS!**

When completely filled with 100 receipts, return this booklet to us with the Seal unbroken. This booklet will then have a cash redemption value of 15¢. We will then break the Seal on page 2 that you may see what is printed under it and, if you wish, you may exchange the cash redemption value for whatever the opening of the Seal discloses. **NO DRAWINGS—NO JUDGINGS—NO DISAPPOINTMENTS!**

This booklet accepted subject to above conditions.

Name_____

Address_____

BE SURE TO SIGN THIS BOOKLET

On the reverse side of said card appear the following legends or instructions:

Thousands of
\$ Dollars \$ AWARDS
To our Customers Through
"Plee-zing" Treasure Chests

Your award is

CAUTION!

This Seal must
not be broken or (Gold Seal
in this
space)
Award is forfeited.

Read rules on page 5

Shown under
This Gold Seal

"There's None Better Than PLEE-ZING"

This Receipt Booklet Redeemable
only at

(Here name of retail dealer is inserted)

Date_____

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Binders, Adrian, Mich.

The food products or cash awards so designated or described under said gold seals vary in value in accordance with each individual card and such designations or descriptions of said awards or prizes are effectively concealed from purchasers and prospective purchasers until the said receipts have been pasted on said cards and the gold seals thereon broken and removed therefrom. The said prizes or awards are thus distributed to the purchasing public wholly by lot or chance.

Respondent supplies and furnishes its customers with various plans or methods of selling and distributing said food products by lot or chance, but such sales plans or methods are similar to the one hereinabove described, varying only in detail. Respondent refunds to said dealers said awards or prizes so distributed by such dealers.

PAR. 3. Retail dealers who purchase respondent's said food products and devices expose the same to the purchasing public and sell and distribute such products in accordance with the above-described sales plans or methods. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries, gift enterprises, or games of chance in the sale of said products in accordance with the sales plans or methods hereinabove set forth. Such sales plans or methods have the tendency and capacity to, and do, induce the consuming or purchasing public to purchase respondent's said products in preference to like or similar products offered for sale and sold by its competitors.

PAR. 4. The sale of such products to the consuming public in the manner above described involves a game of chance or the sale of a chance to procure articles of said products or sums of money of much greater values than the amounts to be paid therefor. The use by respondent of said methods in the sale of its products and the sale of such products by and through the use thereof and by the aid of said methods is a practice of the sort which is contrary to the established public policy of the Government of the United States and in violation of criminal law. The use by respondent of said sales plans or methods has the tendency to unfairly hinder competition. Many persons, firms, and corporations who sell and distribute products in competition with the respondent as above described are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate purchasers of, products similar to those distributed by respondent are attracted by respondent's said sales plans or methods and by the element of chance involved in the sale of said products in the manner above described and are

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thereby induced to purchase said products from respondent in preference to similar products offered for sale and sold by said competitors of respondent who do not use the same or similar methods. The use of said methods by respondent has the capacity and tendency, because of said game of chance, gift enterprise, or lottery scheme, to unfairly divert trade to respondent from its competitors who do not use the same or equivalent or similar methods.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 20, 1940, issued and thereafter served its complaint in this proceeding upon respondent, Ehrhart Conrad Co., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 27, 1940, the respondent filed its answer, in which answer it admitted all of the material allegations of fact set forth in the complaint. The respondent also waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Ehrhart Conrad Co. is a corporation organized and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at 106 Carlisle Street, Hanover, Pa. Respondent is now, and for more than 1 year last past has been engaged in the sale and distribution of food products to retail dealers. Respondent causes and has caused its products, when sold, to be shipped or transported from its aforesaid place of business in the State of Pennsylvania to purchasers thereof in the various other States of the United States and in the District of Columbia, at their respective points of location. There is now, and

for more than 1 year last past has been, a course of trade by said respondent in such food products in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business respondent is, and has been, in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and distributes and has sold and distributed food products labeled "Plee-zing" to retail dealers. Respondent sells and distributes and has sold and distributed to said dealers a so-called "Plee-zing Treasure Chest" device for use in the sale and distribution of said food products to the consuming public in a manner involving the operation of a game of chance, gift enterprise, or lottery scheme. The sales plans or methods employed in selling and distributing said food products to the consuming public by means of said device is substantially as follows: The "Plee-zing Treasure Chest" device consists of a card referred to by respondent as a booklet, with a gold seal thereon, together with 100 small trade "receipts." The said card has provided on the front and reverse sides thereof blank spaces on which said receipts are to be pasted. On the front side or face of said card appear the following instructions or legends:

"Plee-zing" Treasure Chest

Plan and Governing Rules

You will be given one

"Plee-zing" Treasure Chest receipt with each 25¢ spent with us. Be sure and paste receipts in this booklet. Under the Seals of some "Plee-zing" Treasure Chest booklets are listed valuable PLEE-ZING products. Under (Back of Seal in this space) the others is listed cash in amounts of 50¢, 75¢, \$1.00, \$2.00, or \$5.00. **THERE ARE NO BLANKS!** When completely filled with 100 receipts, return this booklet to us with the Seal unbroken. This booklet will then have a cash redemption value of 15¢. We will then break the Seal on page 2 that you may see what is printed under it and, if you wish, you may exchange the cash redemption value for whatever the opening of the Seal discloses. **NO DRAWINGS—NO JUDGINGS—NO DISAPPOINTMENTS!**

This booklet accepted subject to above conditions.

Name _____

Address _____

BE SURE TO SIGN THIS BOOKLET

On the reverse side of said card appear the following legends or instructions:

Thousands of
\$ Dollars \$ as

AWARDS

To our Customers Through
"Plee-zing" Treasure Chests

Your award is

CAUTION!

This Seal must (Gold-Seal
not be broken or in this
Award is forfeited. space)
Read rules on page 5

Shown under
This Gold Seal

"There's None Better Than
PLEE-ZING"

This Receipt Booklet Redeemable
only at
(Here name of retail dealer is
inserted)

Date -----

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Binders, Adrian, Mich.

The food products or cash awards so designated or described under said gold seals vary in value in accordance with each individual card and such designations or descriptions of said awards or prizes are effectively concealed from purchasers and prospective purchasers until the said receipts have been pasted on said cards and the gold seals thereon broken and removed therefrom. The said prizes or awards are thus distributed to the purchasing public wholly by lot or chance.

Respondent supplies and furnishes its customers with various plans or methods of selling and distributing said food products by lot or chance, but such sales plans or methods are similar to the one hereinabove described, varying only in detail. Respondent refunds to said dealers said awards or prizes so distributed by such dealers.

PAR. 3. Retail dealers who purchase respondent's said food products and devices expose the same to the purchasing public and sell and distribute such products in accordance with the above-described sales

plans or methods. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries, gift enterprises, or games of chance in the sale of said products in accordance with the sales plans or methods hereinabove described. Such sales plans or methods have the tendency and capacity to, and do, induce the consuming or purchasing public to purchase respondent's said products in preference to like or similar products offered for sale and sold by its competitors.

PAR. 4. The sale of such products to the consuming public in the manner above described involves a game of chance or the sale of a chance to procure articles of said products or sums of money of much greater values than the amounts to be paid therefor. The use by respondent of said methods in the sale of its products and the sale of such products by and through the use thereof and by the aid of said methods is a practice of the sort which is contrary to the established public policy of the Government of the United States and in violation of criminal law. The use by respondent of said sales plans or methods has the tendency to unfairly hinder competition. Many persons, firms, and corporations who sell and distribute products in competition with the respondent as above described are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate purchasers of, products similar to those distributed by respondent are attracted by respondent's said sales plans or methods and by the element of chance involved in the sale of said products in the manner above described and are thereby induced to purchase said products from respondent in preference to similar products offered for sale and sold by said competitors of respondent who do not use the same or similar methods. The use of said methods by respondent has the capacity and tendency, because of said game of chance, gift enterprise, or lottery scheme, to unfairly divert trade to respondent from its competitors who do not use the same or equivalent or similar methods.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and respondent having waived all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Ehrhart Conrad Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of food products or any other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing said products or any other merchandise so packed and assembled that sales of said products or other merchandise to the general public are to be made or may be made by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others, sales promotion cards, push or pull cards, punchboards, or other devices, together with said food products or other merchandise, which said promotion cards, push or pull cards, punchboards, or other devices are to be used or may be used in the sale and distribution of said products, or any other merchandise, to the general public by means of a game of chance, gift enterprise, or lottery scheme.

3. Supplying to or placing in the hands of others, sales promotion cards, or sales promotion plans or schemes, or any other devices, either with assortments of said products or other merchandise, or separately, which said sales promotion cards, sales promotion plans or schemes, or other devices are to be used or may be used in selling or distributing such products or other merchandise to the general public by means of a game of chance, gift enterprise, or lottery scheme.

4. Selling or otherwise distributing any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF
PRUDENTIAL SALES CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3839. Complaint, June 29, 1939—Decision, May 2, 1940

Where a corporation engaged in the sale and distribution of electric dry shavers, wrist watches, electric roasters, pen and pencil sets, blankets, and various other articles of merchandise to purchasers in various other States and in the District of Columbia, in competition with others engaged in sale and distribution of like or similar articles in commerce as aforesaid; in soliciting sale of and in selling and distributing its said merchandise—

- (a) Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes by which such merchandise was sold and distributed to ultimate consumers thereof wholly by lot or chance and which involved distribution to purchasing public of certain literature and instructions, including among other things, (1) push cards, order blanks, illustrations of merchandise involved and circulars explaining his plan of selling such merchandise and allotting it as premiums or prizes to the operators of said push cards under plan, among others, by which person selecting from a list of 25 feminine names displayed on card, name corresponding to that concealed under card's large master seal, after sale of all chances, received electric dry shaver or article of merchandise being thus disposed of, and person securing certain number as disclosed by disk pushed received combination pen or pencil, and under which amount paid for chance was dependent upon number secured in accordance with card's explanatory legend, and (2) various push cards accompanied by such order blanks, etc., for use in sale and distribution of its merchandise by means of game of chance, gift enterprise, or lottery scheme, and in accordance with sales plans similar to that above described and varying therefrom in detail only; and

Supplied thereby to, and placed in the hands of others, means of conducting lotteries in the sale of its said products by persons to whom it furnished said push cards, and who used same in purchasing, selling, and distributing its merchandise in accordance with the aforesaid sales plan, under which fact as to whether purchaser received an article of merchandise or nothing for amount of money paid, and which of said articles purchaser was to receive, if any, were determined wholly by lot or chance, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving a game of chance or sale of a chance to win something by chance, or any other method contrary to public policy and refrain therefrom;

With the result that many persons were attracted by its said sales plan or method in the sale and distribution of its merchandise, and by elements of chance involved therein, and were thereby induced to buy and sell its products in preference to those of said competitors who do not use same or equivalent